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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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## No. 745

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PREMIER-PABST SALES COMPANY,
*Appellant,*

*vs.*

WALTER T. GROSSCUP, W. WORRELL WAGNER, AND LEO A. CROSSEN, CONSTITUTING THE PENNSYLVANIA LIQUOR CONTROL BOARD, ET AL.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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## STATEMENT AS TO JURISDICTION.

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C. S. WESLEY,
*Counsel for Appellant.*

WESLEY, WAGONER, TROUTMAN
& MCWILLIAMS,
*Of Counsel.*

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# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUNE SESSIONS, 1935.

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No. 8953.

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PREMIER-PABST SALES COMPANY, A CORPORATION OF THE STATE OF DELAWARE,

*Complainant,*

*vs.*

WALTER T. GROSSCUP, W. WORRELL WAGNER, AND LEO A. CROSSEN, CONSTITUTING THE PENNSYLVANIA LIQUOR CONTROL BOARD; CHARLES F. KELLEY, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA; WILL B. HADLEY, COUNTY TREASURER OF PHILADELPHIA COUNTY, PENNSYLVANIA; CHARLES J. MARGIOTTI, ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA; AND GEORGE H. EARLE, 3D, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA,

*Defendants.*

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## STATEMENT AS TO JURISDICTION OF APPEAL.

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MAY IT PLEASE THE COURT:

The appellant, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

A.

**Statutory Provision Sustaining Jurisdiction.**

Section 266 of the Judicial Code as last amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936, 938 (U. S. Code, Title 28, Sec. 380), relating to appeals to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory injunction, and from a final decree granting or denying a permanent injunction, in suits to suspend or restrain "the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, provides that:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case * * * The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B.

**Statute of the State, the Validity of Which is Involved.**

The following sections of the "Pennsylvania Beverage License Law", Act of July 18, 1935, P. L. —, are here involved:

Section 2 thereof, which defines distributors and importing distributors of malt or brewed beverages as follows:

> "(d) The term 'distributor' means and includes persons licensed by the board to engage in the purchase, only from Pennsylvania manufacturers and from importing distributors, and the resale of malt

(liquors) or brewed beverages in the original sealed packages, as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces.

"(e) The term 'importing distributors' means and includes persons licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth, and from persons licensed as manufacturers and distributors under this Act, and the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces."

Sections 19 (b) and (c) thereof, which require the payment of license fees as follows:

"(b) In the case of a distributor, the license fee shall be $400.00 and shall be paid to the board."

"(c) In the case of an importing distributor, the license fee shall be $900.00 and shall be paid to the board."

That portion of Section 18 thereof requiring all licensees to furnish a bond to the Commonwealth of Pennsylvania as follows:

"The penal sum of bonds filed by distributors shall be $1,000.00, and for importing distributors $2,000.00."

Section 5 (b) thereof, which provides:

"Such licenses shall be issued only to * * * reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania. Such licenses shall be issued to corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania only when it appears that all of the

officers and directors of the corporation are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that at least fifty-one percentum of the capital stock of such corporation is actually owned by individuals who are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application."

C.

**Date of Decree and Date of Application for Appeal.**

The decree sought to be reviewed was entered on January 7th, 1936. The application for appeal was presented on January 7th, 1936.

D.

**Nature of Case and Ruling Below.**

The plaintiff is a Delaware corporation, duly licensed to transact business in the State of Pennsylvania, where it is engaged solely in the business of selling at wholesale, in Pennsylvania, beer manufactured outside that State. In the course of its business, it secures orders from its customers for the purchase of the beer, and in the fulfillment thereof in turn purchases the beer from the brewer. The plaintiff ships the beer thus purchased from the breweries either at Milwaukee, Wisconsin, or at Peoria, Illinois, f. o. b. railroad cars, to its customers at their places of business in Pennsylvania. Plaintiff's profit is measured by the difference between the price charged it by the brewer and the price paid to it by its several customers. The Bill was brought against the defendant State officers to restrain them from enforcing the provisions of the Act which require an importer of and dealer in beer manufactured out-

side the State the payment of a license fee of $900.00, and filing of a bond in the amount of $2,000.00, while requiring of a dealer in beer manufactured within the State a license fee of only $400.00 and a bond of but $1,000.00; and from the enforcement of those provisions restricting the granting of licenses to those corporations all of whose officers and directors have been residents of the State for at least two years prior to the date of the license application, and at least fifty-one per cent. of whose capital stock is owned by individuals who have been residents of the State for a period of at least two years prior thereto. The Bill was framed so as to determine the questions: (a) whether, since the passage of the Twenty-first Amendment to the Constitution of the United States, a State may impose direct burdens on interstate commerce and discriminate against beer manufactured outside the State, and the importer or dealer therein, and in favor of beer manufactured within the State, and the dealer therein, solely because of the origin of the product; and (b) whether the qualifications required of a licensee are not so arbitrary, unreasonable, and capricious as to deprive plaintiff of its property without due process of law and deny to it the equal protection of the laws.

There are no facts in dispute, as the parties filed a stipulation of record setting forth the admitted facts and further stipulated that the hearing on the motion for an interlocutory injunction should be considered as a final hearing for a permanent injunction. The court held that the provisions complained of were authorized by the Twenty-first Amendment, and refused the motion for an interlocutory injunction and the prayer for a final injunction, and entered its final decree dismissing the bill.

Since the passage of the Twenty-first Amendment two lower Federal courts have held that the Twenty-first Amend-

ment does not exempt intoxicating liquors from the provisions of the commerce clause and the other provisions of the Constitution of the United States, and that a State may not discriminate against interstate commerce in intoxicating liquors, nor arbitrarily and capriciously regulate the traffic therein. See: *Triner Corporation* v. *Arundel,* 11 Fed. Supp. 145 (1935), and *Young's Market Co.* v. *State Board of Equalization,* 12 Fed. Supp. 140 (1935).

The case at bar is the only decision in the Federal courts which has construed the Twenty-first Amendment as relieving the State, in regulating the traffic in intoxicating liquors, from the limitations prescribed by the Constitution of the United States.

The important and as yet unsettled questions of law to be determined by this Court in the present appeal are:

1. Where the importation and sale of beer is, by the laws of a State, recognized as a lawful business, subject to prescribed regulations, does the Twenty-first Amendment to the Constitution of the United States authorize the State to burden interstate commerce by discriminating against beer manufactured in another State, and the dealer therein, solely because of its origin?

2. Does the Twenty-first Amendment to the Constitution of the United States authorize a State to enact regulations unreasonably and arbitrarily limiting the classes of persons authorized to engage in the distribution of beer?

The determination of these questions is of importance to the Commonwealth of Pennsylvania and the several States which permit the manufacture and sale of intoxicating liquors, as well as to the importers and dealers therein and to the public generally.

E.

**Cases Believed to Sustain Jurisdiction.**

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal:

*Wilkinson* v. *Rohrer*, 140 U. S. 545.
*Scott* v. *Donald*, 165 U. S. 58.
*Adams Express Co.* v. *Kentucky*, 238 U. S. 190.
*Jas. Clark Distilling Co.* v. *Western Md. R. R. Co.*, 242 U. S. 311.
*United States* v. *Hill*, 248 U. S. 420.
*McCormick & Co.* v. *Brown*, 286 U. S. 131.
*Baldwin* v. *Seelig*, 294 U. S. 511.
*Guy* v. *City of Baltimore*, 100 U. S. 434.
*Welton* v. *Missouri*, 91 U. S. 275.
*Louis K. Liggett Co.* v. *Baldridge*, 278 U. S. 105.

**Conclusion.**

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

WESLEY, WAGONER, TROUTMAN & MCWILLIAMS,
By C. S. WESLEY,
*Attorneys for Appellant.*